IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 1068 of 2007(B)

(AGAINST THE ORDER IN EP 91/2004. IN OS.410/1996 of MUNSIFF COURT, CHANGANACHERRY)

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PETITIONERS:

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1. V.K. KUMARADAS, S/O.KUTTAN, AGED 63, RESIDING AT MALAYIL HOUSE, MADAPPALLY P.O., CHANGANACHERRY, KOTTAYAM DISTRICT.

2. K.C. GOPINATHAN, S/O.CHINNAYYA, AGED 54, RESIDING AT THADATHIL HOUSE, SACHIVOTHAMAPURAM, KURICHY P.O., CHANGANACHERRY, KOTTAYAM DISTRICT.

BY ADV. SRI.PHILIP MATHAI
SRI.R.MURALEEKRISHNAN

RESPONDENTS:

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1. THE SOUTH INDIAN BANK LTD., REP. BY ITS MANAGER, CHANGANACHERRY BRANCH, KOTTAYAM DISTRICT.

2. V.K. ANIRUDHAN, RESIDING AT SANKARAMANGALAM, PUZHAVATHU, CHANGANACHERRY, KOTTAYAM DISTRICT.

3. N. GOPALAKRISHNAN NAIR, S/O. NARAYANAN NAIR, AGED 56, RESIDING AT PARVANAM, MUKKATTUPADI, THRIKKODITHANAM, CHANGANACHERRY, KOTTAYAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/01/2007 ALONG WITH WPC NO. 21654 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M. SASIDHARAN NAMBIAR, J.

W.P.(C).No. 21654 OF 2006 & 1068 OF 2007

Dated this the 12th day of January, 2007

J U D G M E N T

Petitioner in W.P.(C)21654/2006 is second judgment debtor and petitioners in W.P.C.1068/2007 are judgment debtors 3 and 4 in O.S.410/1996. First respondent is the decree holder. First respondent filed E.P.No.91/04 for execution of the decree by arrest and detention of judgment debtors contending that they have sufficient means but willfully did not pay the decree debt. Before the executing Court, though second judgment debtor appeared, he did not file an objection. Judgment debtors 3 and 4 filed objection contending that they have no source to pay the decree amount in lump sum and they are ready to pay the decree amount in installments. The executing Court as per order dated 27.1.2006 ordered arrest of petitioners herein finding that they have sufficient means and they willfully defaulted to pay the same. It is being challenged in these writ petitions.

2. Though notice was served on the decree holder, first respondent in W.P.(C)No.21654/2006, first respondent did not appear. As the very same order is challenged in W.P.(C) No.1068/2007no notice is issued to first respondent in view of the orders being passed in these cases.

3. Heard learned counsel appearing for the petitioners.

4. Learned counsel appearing for the petitioner in W.P.C.21654/2006 submitted that petitioner is prepared to pay the balance decree debt due under his share in three installments and the balance is to be paid by the other judgment debtors. Learned counsel appearing for the petitioners in W.P.C.1068/2007 submitted that they have offered to pay the decree debt before the executing Court in installments and executing court did not consider the same and they are prepared to pay at the rate of Rs.1000/- each.

The writ petitions are disposed directing judgment debtors 2 to 4 to pay the balance amount due to the decree holder Bank at the rate of Rs.1000/- each in monthly installments, the first instalment falling on 1.2.2007. Though second judgment debtor contended that he is only liable to pay the share due by him, as the liability is joint and several he cannot insist such a claim and decree holder is entitled to claim the amount from all the judgment debtors. It is made clear that if the judgment debtors commit default in payment of two consecutive monthly instalments executing court to order their arrest.

(M. SASIDHARAN NAMBIAR, JUDGE)

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